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 5 Attorneys for Plaintiff



8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

12 COMMUNITY HOSPITAL OF THE  
 MONTEREY PENINSULA,

13 Plaintiff,

14 vs.

15 MICHAEL O. LEAVITT, Secretary of  
 16 the United States Department of Health  
 and Human Services,

17 Defendant.

CASE NO. C 06-3302 JW RS

**JOINT STATUS REPORT AND  
 REQUEST TO CONTINUE STATUS  
 CONFERENCE**

Date: December 3, 2007

Time: 10 a.m.

Court: Courtroom 8, 4<sup>th</sup> Floor

19 Pursuant to the Court's July 17, 2007 Order, as modified by the Court's  
 20 October 31, 2007 Order, the parties to the above-entitled action jointly submit this  
 21 Status Report.

22 The parties recognize that this Court has indicated that the December 3, 2007  
 23 Status Conference may not be continued and that all counsel need to be physically  
 24 present in court for the Status Conference. However, as explained below, the parties  
 25 respectfully request one more continuance because it would be extremely inefficient  
 26 for the parties to begin litigating this case in any manner since this action is very  
 27 likely to be settled and dismissed with prejudice by early next year.

28 The Complaint in this case was filed on May 19, 2006, and the Defendant

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1 answered on October 30, 2006. On December 8, 2006, the parties submitted a Joint  
 2 Case Management Statement that informed the Court that issues similar to those  
 3 raised in this action are being addressed in numerous cases currently pending in the  
 4 U.S. District Court for the District of Columbia. The D.C. District Court cases are  
 5 consolidated under the caption *In Re Medicare Reimbursement Litigation*, Case No.  
 6 1:03-mc-90. Pursuant to the parties' Joint Case Management Statement, the Court  
 7 vacated the December 18, 2006 Case Management Conference and scheduled a  
 8 March 19, 2007 Status Conference with a Joint Status Report due to the Court by  
 9 March 9, 2007.

10 The parties filed a Joint Status Report on March 8, 2007 that again advised  
 11 the Court that settlement discussions were ongoing in the *In Re Medicare* case and  
 12 that this case might be a part of any such settlement. The Court granted the parties  
 13 request for continuance of the March 19, 2007 status conference to July 23, 2007.

14 The parties filed another Joint Status Report on July 12, 2007 asking for  
 15 another continuance in light of ongoing settlement discussions in the D.C. District  
 16 Court case. The Court granted the continuance and indicated that no further  
 17 continuances would be granted and that all counsel need to be physically present at  
 18 the Status Conference, which is now scheduled for December 3, 2007.

19 The purpose of this Joint Status Report is to inform the Court of the status of  
 20 settlement negotiations in the *In Re Medicare* cases, because those negotiations are  
 21 intended to resolve the above-captioned action, along with the many D.C. District  
 22 Court cases. Significant progress has been made in the settlement discussions since  
 23 the parties' July 12, 2007 Joint Case Management Statement. The litigating  
 24 attorneys in the *In Re Medicare* case have reached an agreement in principle that  
 25 expressly incorporates this case. The attorneys in the *In Re Medicare* cases recently  
 26 informed the presiding district court judge, the Honorable Paul L. Friedman, that  
 27 counsel would be submitting their agreed settlement for final approval by the United  
 28 States Department of Justice and the other parties to the litigation. If that agreement

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1 in principle is finalized, this case will be dismissed with prejudice without the need  
2 for any litigation or use of court resources.

3       Although hard to predict, the settlement approval process may be successfully  
4 and formally concluded within two months from today. Given the large number of  
5 hospitals and the substantial amounts at issue in the consolidated D.C. District Court  
6 cases, the settlement approval process requires input from the highest levels within  
7 the United States Departments of Justice and Health and Human Services.

8       Therefore, the parties respectfully request that the Court continue any and all  
9 deadlines in this case for at least three months. Given the likelihood of finalizing  
10 the current settlement in principle of the *In Re Medicare* case and the likelihood that  
11 this case therefore need not be litigated, the parties request that the Court continue  
12 the Status Conference to March 17, 2008. The parties also request that the Court  
13 order the parties to submit another Joint Status Report on or before March 7, 2008 in  
14 order to report on the status of the *In Re Medicare* cases and the above-captioned  
15 action.

16  
17 DATED: November 14, 2007

SCOTT N. SCHOOLS  
United States Attorney

18  
19 By: \_\_\_\_\_/s/  
20  
21 SARA WINSLOW  
Assistant United States Attorney  
Attorney for Defendant

22  
23 DATED: November 14, 2007

HOOPER, LUNDY & BOOKMAN, INC.

24  
25 By: \_\_\_\_\_/s/  
26 JON P. NEUSTADTER  
Attorneys for Plaintiff

1  
2 [PROPOSED] ORDER  
3

4 A Status Conference in this matter was scheduled for December 3, 2007 at 10  
5 AM. Pursuant to the parties' Joint Status Report, the Court CONTINUES the Status  
6 Conference to **Monday, March 17**, 2008 at 10 AM. The parties shall  
7 submit a joint status report by **Friday, March 7**, 2008.

8 Dated: November 28, 2007

9   
JAMES WARE

10 United States District Judge

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1                   **PROOF OF SERVICE**

2                   **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3                   I am employed in the County of Los Angeles, State of California. I am over  
4                   the age of eighteen years and not a party to the within action; my business address is  
5                   1875 Century Park East, Suite 1600, Los Angeles, California 90067-2517.

6                   On November 14, 2007, I served the following document(s) described as  
7                   **JOINT CASE MANAGEMENT STATEMENT** on the interested parties in this  
8                   action by placing true copies thereof enclosed in sealed envelopes addressed as  
9                   follows:

10                  Scott N. Schools, Esq.  
11                  United States Attorney  
12                  Joann M. Swanson  
13                  Chief, Civil Division  
14                  Sara Winslow  
15                  Assistant United States Attorney  
16                  450 Golden Gate Ave., Box 36055  
17                  San Francisco, CA 94102

18                  Jonathan P. Neustadter, Esq.  
19                  Hooper, Lundy & Bookman  
20                  1875 Century Park East, 16<sup>th</sup> Fl.  
21                  Los Angeles, CA 90067

22                  **BY MAIL:** I am "readily familiar" with Hooper, Lundy & Bookman's practice for  
23                  collecting and processing correspondence for mailing with the United States Postal  
24                  Service. Under that practice, it would be deposited with the United States Postal  
25                  Service that same day in the ordinary course of business. Such envelope(s) were  
26                  placed for collection and mailing with postage thereon fully prepaid at Los Angeles,  
27                  California, on that same day following ordinary business practices.

28                  I declare under penalty of perjury under the laws of the United States of  
29                  America that the foregoing is true and correct and that I am employed in the office  
30                  of a member of the bar of this Court at whose direction the service was made.

31                  Executed on November 14, 2007, at Los Angeles, California.

32                  \_\_\_\_\_  
33                  /s/  
34                  Jodee Jones